

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEVON MILLER,

Petitioner,

v.

SUPERINTENDENT OF THE
SHAWANGUNK CORRECTIONAL
FACILITY,

Respondent.

**USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#:
DATE FILED:**

18-CV-1762 (RA)

MEMORANDUM
OPINION& ORDER

RONNIE ABRAMS, United States District Judge:

On July 31, 2020, this Court denied Petitioner Devon Miller’s petition for writ of habeas corpus, finding that the state court’s decision below was neither “contrary to, [n]or involved an unreasonable application of, clearly established Federal law,” nor was it “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” Opinion and Order, Dkt. 36 (citing 28 U.S.C. § 2254(d)). On August 27, 2020, Miller filed a notice of appeal, appealing this Court’s ruling to the Court of Appeals for the Second Circuit. Dkt. 40. On September 1, 2020, Miller filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e) in this Court. Dkt. 41.

A federal district court and a federal appellate court may not maintain simultaneous jurisdiction over a case. As the Supreme Court held in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), “[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Id.* at 58. Although a district court may retain jurisdiction over a motion for reconsideration that is filed *before* a notice of appeal, *see Lowrance v. Achtyl*, 20 F.3d 529, 533 (2d Cir. 1994) (citing Fed. R. App. p. 4(a)(4)); *see also In re Fund for Prot. of Inv’r Rights in Foreign States pursuant to 28 U.S.C. § 1782*, 19-mc-401 (AT),

2020 U.S. Dist. LEXIS 153808, *2 (S.D.N.Y. Aug. 25, 2020), here, where the motion for reconsideration was filed four days *after* the notice of appeal, that rule does not apply.

Accordingly, the Court hereby dismisses Miller's motion for reconsideration for lack of jurisdiction. The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 41. The Clerk of Court shall mail a copy of this memorandum opinion and order to Petitioner Miller.

SO ORDERED.

Dated: October 26, 2020
New York, New York

A handwritten signature in blue ink, appearing to read 'Ronnie Abrams', is written above a horizontal line.

RONNIE ABRAMS
United States District Judge